

## LEGISLATIVE BILL 352

Approved by the Governor April 10, 2000

Introduced by Crosby, 29; Lynch, 13; Dw. Pedersen, 39; Bourne, 8; Bruning, 3

AN ACT relating to disabled persons; to amend sections 83-210.01 to 83-210.03, 83-211, 83-211.02, and 84-1604.01, Reissue Revised Statutes of Nebraska, and section 71-4720.01, Revised Statutes Supplement, 1998; to adopt the Commission for the Blind and Visually Impaired Act; to eliminate provisions relating to the Department of Health and Human Services; to provide for a voice newspaper delivery system and a technology access contract clause; to eliminate a videotext service; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal sections 83-210.04 to 83-210.07 and 83-212, Reissue Revised Statutes of Nebraska, and section 71-4733, Revised Statutes Supplement, 1998; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 16 of this act shall be known and may be cited as the Commission for the Blind and Visually Impaired Act.

Sec. 2. The purposes of the Commission for the Blind and Visually Impaired Act are to assist blind persons in gaining remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

Sec. 3. For purposes of the Commission for the Blind and Visually Impaired Act:

(1) Blind person means:

(a) A person having sight which is so defective as to seriously limit his or her ability to engage in the ordinary vocations and activities of life; or

(b) A person, to be eligible and licensed as a blind vending facility operator under section 11 of this act:

(i) Having no greater than 20/200 central visual acuity in the better eye after correction; or

(ii) Having an equally disabling loss of the visual field in which the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(2) Board means the governing board of the commission;

(3) Commission means the Commission for the Blind and Visually Impaired;

(4) Committee of Blind Vendors means the committee created pursuant to 20 U.S.C. 107b-1;

(5) State workforce investment board means the board authorized by the federal Workforce Investment Partnership Act of 1998 and established in Nebraska;

(6) Vending facility means:

(a) Shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of articles approved by the office, agency, or person having control of the property on which the vending facility is located; and

(b) Manual or coin-operated vending machines or similar devices for vending articles approved by the office, agency, or person having control of the property on which the vending facility is located; and

(7) Vending facility program means the program established and maintained pursuant to section 11 of this act.

Sec. 4. (1) The Commission for the Blind and Visually Impaired is created. The governing board of the commission shall consist of five members appointed by the Governor with the approval of a majority of the members of the Legislature. All board members shall have reasonable knowledge or experience in issues related to blindness which may include, but is not limited to, reasonable knowledge or experience acquired through membership in consumer organizations of the blind. No board member or his or her immediate family shall be a current employee of the commission. At least three board members shall be blind persons: One member shall be a member or designee of the National Federation of the Blind of Nebraska; one member shall be a member or designee of the American Council of the Blind of Nebraska; and one member may be a member of another consumer organization of the blind.

(2) Board members shall be appointed for staggered terms with the

initial members appointed for terms as follows: Two members for terms ending on December 31, 2001, and three members for terms ending December 31, 2003. Subsequent appointments shall be for terms of four years with no board member appointed to more than two consecutive terms. Board members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Board members may be removed for cause.

(3) A majority of the board members constitutes a quorum for the transaction of business. The board shall annually elect a chairperson from its membership.

(4) Board members shall receive a per diem of seventy dollars for each day spent in the performance of their official duties and shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. Aside from the provisions of this subsection, a board member shall not receive other compensation, perquisites, or allowances for the performance of official duties.

Sec. 5. Section 83-211, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-211.~~ (1) The commission shall employ a director who is the administrative officer of the commission. The director shall hire employees as necessary for the efficient operation of the commission. The director shall serve at the pleasure of the commission.

(2) The commission ~~The Department of Health and Human Services~~ shall have power in each instance ~~(1)~~ (a) to establish standards of qualification for personnel employed in carrying out sections ~~83-210.01 to 83-210.07~~ and ~~(2)~~ pursuant to the Commission for the Blind and Visually Impaired Act and (b) to employ necessary field agents, teachers, and other personnel in accordance with such standards and fix their compensation. All employees of the commission, except the director, shall be included within the State Personnel System.

Sec. 6. Section 83-211.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-211.02.~~ (1) The rehabilitation advisory council to the Department of Health and Human Services commission is created to aid in providing services for the visually impaired blind persons. The council shall consist of not to exceed fifteen members who shall be appointed by the Governor. Five members shall be appointed for terms of one year, five members for terms of two years, and five the remaining members for terms of three years with the Governor designating the expiration of the term of office of each member of the council when first appointed. Thereafter their successors shall serve for terms of three years. In appointing members to the council, the Governor shall give due consideration to the geographical distribution of visually impaired blind persons within the state with a view to apportioning membership on the council in accordance with such distribution. The After the operative date of this act, the Governor shall appoint representatives of the following as terms expire or vacancies occur: (a) At least two representatives of blindness advocacy groups representing blind persons, to accord fair representation to the several organizations of the blind; (b) at least one representative who is a current or former applicant or recipient of vocational rehabilitation services; (c) a representative from the Client Assistance Program; (d) a qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs, who shall be a nonvoting member if employed by the commission; (e) a representative of a community rehabilitation program service provider; (f) four representatives of business, industry, and labor; (g) a representative of a parent training and information center; (h) at least one representative of individuals with multiple disabilities, including blindness, who have difficulty in representing themselves or are unable to represent themselves due to their disabilities; and (i) a representative of the statewide Independent Living Council. a vocational rehabilitation counselor who, if employed by the Director of Rehabilitation Services for the Visually Impaired, shall be a nonvoting member, and at least one representative from each of the following: (a) The statewide Independent Living Council; (b) a parent training and information center; (c) the Client Assistance Program; (d) a community rehabilitation program service provider; (e) business, industry, or labor; (f) advocacy groups of blind and visually impaired persons to accord fair representation to the several organizations of the blind and visually impaired; and (g) applicants or recipients of vocational rehabilitation services at the time of appointment or at some time prior to being appointed. A majority of the members of the council shall be blind or visually impaired persons who are not employed by the commission. In case of vacancy in the

office of any member, his or her successor shall be appointed for the unexpired term.

(2) Members of the council who are not state employees shall receive thirty dollars per day for each day engaged in the duties of the council. Members of the council shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(3) The council shall hold four meetings a year at such times and places as determined by the council. A chairperson and such other officers as may be necessary shall be elected by the council by majority vote for terms of office as determined by the council.

(4) The individual designated by the Department of Health and Human Services as the Director of Rehabilitation Services for the Visually Impaired director of the commission employed pursuant to section 5 of this act shall serve as an ex officio member of the council in a nonvoting capacity. The director shall furnish any data required by the council in carrying out its functions subject to the limitations prescribed by law relating to the confidentiality of information with respect to individual clients.

(5) The council shall, after consulting with the state workforce investment board:

(a) Review and analyze the rehabilitation services provided by the Director of Rehabilitation Services for the Visually Impaired commission and provide advice to the director of the commission, particularly with respect to eligibility for and the extent, scope, and effectiveness of services and the impact of other agencies on the success of clients;

(b) Advise the Director of Rehabilitation Services for the Visually Impaired In partnership with the commission and its director, develop, agree to, and review state goals and priorities on the preparation of applications, the state plan, the strategic plan, reports, needs assessments, and evaluations required by federal law;

(c) Review and analyze the effectiveness of and consumer satisfaction with other public and private agencies providing services to blind or visually impaired persons persons, including achieved employment outcomes and the provision of health and related benefits;

(d) Prepare and submit an annual report to the Director of Health and Human Services director of the commission, the Governor, and the Commissioner of Rehabilitation Services on the status of vocational rehabilitation services operated by the Director of Rehabilitation Services for the Visually Impaired commission. This report shall also be made available to the public;

(e) Coordinate with other councils in the state that serve disabled persons;

(f) Advise the Director of Rehabilitation Services for the Visually Impaired commission and provide for coordination and the establishment of working relations with the statewide Independent Living Council and centers for independent living; and

(g) Perform other duties that the council determines to be appropriate.

Sec. 7. (1) The commission shall:

(a) Apply for, receive, and administer money from any state or federal agency to be used for purposes relating to blindness, including federal funds relating to vocational rehabilitation of blind persons as provided in subsection (1) of section 10 of this act;

(b) Receive on behalf of the state any gifts, donations, or bequests from any source to be used in carrying out the purposes of the Commission for the Blind and Visually Impaired Act;

(c) Promote self-support of blind persons as provided in sections 8, 9, and 11 of this act;

(d) Provide itinerant training of alternative skills of blindness, including, but not limited to, braille, the long white cane for independent travel, adaptive technology, and lifestyle maintenance;

(e) Establish, equip, and maintain a residential training center with qualified instructors for comprehensive prevocational training of eligible blind persons. The center shall also provide comprehensive independent living training as well as orientation and adjustment counseling for blind persons;

(f) Administer and operate a vending facility program in the state, in its capacity as the designated licensing agency pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq., for the benefit of blind persons;

(g) Contract for the purchase of information services for blind persons; and

(h) Perform other duties necessary to fulfill the purposes of the Commission for the Blind and Visually Impaired Act.

(2) The commission may perform educational services relating to blindness and may cooperate and consult with other public and private agencies relating to educational issues.

Sec. 8. To promote self-support of blind persons:

(1) The commission shall:

(a) Provide placement and career development services;

(b) Provide prevocational training;

(c) Support integration with and access to community-based educational and vocational training opportunities;

(d) Implement employer outreach and cultivation; and

(e) Develop inservice community-based recruitment and networking resources; and

(2) The commission may:

(a) Maintain employment data bases;

(b) Facilitate small business incubation; and

(c) Develop recommendations for state contract preferences.

Sec. 9. (1) For a person to qualify for blindness-related services from the commission, the commission shall find such person to be (a) a blind person as defined in subdivision (1)(a) of section 3 of this act or (b) a person who is experiencing a deteriorating condition which is expected to result in blindness. A person seeking to qualify for blindness-related services may obtain an eye examination from a licensed ophthalmologist or optometrist of his or her choice or provide other certifying evidence of existing or potential visual impairment as required by the rules and regulations of the commission.

(2) The commission shall maintain a list of all ophthalmologists and optometrists currently licensed in Nebraska and establish procedures for a person to obtain evidence to verify that he or she qualifies for blindness-related services.

(3) When an eye examination is required for a person seeking to qualify for blindness-related services, the commission shall pay the cost pursuant to its rules and regulations. The commission may assist any person seeking to qualify for blindness-related services under the Commission for the Blind and Visually Impaired Act in arranging an eye examination or obtaining other evidence pursuant to this section.

Sec. 10. Section 83-210.02, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-210.02.~~ (1) The Department of Health and Human Services is hereby commission is authorized to accept the provisions of Public Law 112, Ninety-third Congress of the United States and all amendments thereto the federal Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq., and to cooperate with the United States Government in any way necessary to enable the department commission to receive federal funds for the vocational rehabilitation of the blind persons as provided in such public law act and the provisions of Titles II and XVI of the federal Social Security Act, and any amendments thereto as amended, 42 U.S.C. 301 et seq.

(2) The Department of Health and Human Services (a) may collect, interpret, and disseminate information relating to the cause, prevention, and cure of blindness and (b) commission shall provide vocational rehabilitation services for the blind persons, including, but not limited to, prevocational training, maintenance during training, transportation, occupational tools and equipment, vocational training, medical and surgical care and hospitalization, and prosthetic appliances. ~~7 vocational training, maintenance during training, transportation, and occupational tools and equipment.~~

Sec. 11. Section 83-210.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-210.03.~~ For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind persons, and stimulating the blind persons to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of sections 83-210.03 to 83-210.06 shall be authorized to operate vending operations in the commission shall administer and operate vending facilities programs pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq. Blind persons licensed by the commission pursuant to its rules and regulations are authorized to operate vending facilities in any federally owned building or on any federally owned or controlled property, in any state-owned building or on any state-owned or controlled property, or on any county, city, or municipally owned or controlled property with the approval of the local governing body, where when, in the judgment of the Director of Health and Human Services director of the commission, such vending businesses

facilities may be properly and satisfactorily operated by blind persons.

Sec. 12. Section 83-210.01, Reissue Revised Statutes of Nebraska, is amended to read:

~~83-210.01. There is hereby created a fund, to be known as the Small Business Enterprises Cash Fund, from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of sections 83-210.03 to 83-210.07. The Commission for the Blind and Visually Impaired Cash Fund is created. On the operative date of this act, any money in the Small Business Enterprises Cash Fund and any portion of the Department of Health and Human Services Cash Fund or any other cash funds attributable to the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services shall be transferred to the Commission for the Blind and Visually Impaired Cash Fund. Any custodial funds, gifts, trusts, and federal grants attributable to the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services shall be transferred and attributable to the commission. The fund shall contain money received pursuant to the Commission for the Blind and Visually Impaired Act and shall include a percentage of the net proceeds derived from the operation of enterprises provided pursuant to sections 83-210.03 to 83-210.07 vending facilities which do not employ more than three full-time people or the equivalent thereof if part-time employees are utilized. The net proceeds from the operation of such enterprises vending facilities shall accrue to the blind vending facility operator, except for the percentage of the net proceeds that shall revert to the cash fund. Such fund shall be used for supervision and such other administrative purposes as shall be necessary. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that shall revert to the cash fund shall be determined by the department after an investigation has been made to reveal the gross proceeds, cost of operation, amount necessary to replenish the stock of merchandise, and the business needs of the blind individual vending facility operator. All equipment purchased from such cash the fund shall be is the property of the state and shall be disposed of only by sale at a fair market price. Any money in the cash fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.~~

Sec. 13. ~~The commission shall file an annual report with the Governor and the Clerk of the Legislature, prior to each regular session of the Legislature, which details the activities and expenditures of the commission and shall include separately information related to the activities and expenditures of the vending facility program as well as estimates of anticipated expenditures and anticipated revenue available to the vending facility program from all sources.~~

Sec. 14. ~~The commission shall provide an opportunity for a fair hearing to any person applying for or receiving services who is dissatisfied with any action or failure to act arising from the operation or administration of any service or program authorized under the Commission for the Blind and Visually Impaired Act.~~

Sec. 15. ~~The commission shall adopt and promulgate rules and regulations as necessary to implement the purposes of the Commission for the Blind and Visually Impaired Act.~~

Sec. 16. (1) ~~All property, equipment, supplies, and personnel which belonged to, were allocated to, or were used to support the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services prior to the operative date of this act are transferred to the Commission for the Blind and Visually Impaired.~~

(2) ~~All existing contracts and agreements in effect on the operative date of this act as to the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services are binding and effective upon the Commission for the Blind and Visually Impaired.~~

Sec. 17. Section 71-4720.01, Revised Statutes Supplement, 1998, is amended to read:

71-4720.01. For purposes of ~~this section and sections 71-4720 to 71-4733~~ 71-4732:

(1) Commission means Commission for the Deaf and Hard of Hearing;

(2) Deaf means a hearing impairment, with or without amplification, which is so severe that the person with the impairment may have difficulty in auditorily processing spoken language without the use of an interpreter; and

(3) Hard of hearing means a hearing loss, permanent or fluctuating, which may adversely affect the ability to understand spoken language without the use of an interpreter or auxiliary aid.

Sec. 18. Section 84-1604.01, Reissue Revised Statutes of Nebraska,

is amended to read:

84-1604.01. Any person who is blind as defined in section ~~83-212~~ 3 of this act and who provides services under contract to the State of Nebraska to a disabled person as defined in section 68-1503 shall be afforded the opportunity to enroll in the state employees group health insurance program until age sixty-five. Eligible persons electing this option shall be responsible for the entire premium cost and an administrative fee consistent with that allowed by federal guidelines for continuation of health insurance.

Sec. 19. (1) The Commission for the Blind and Visually Impaired, the Nebraska Information Technology Commission, and the Chief Information Officer, in consultation with other state agencies and after at least one public hearing, shall develop a technology access clause to be included in all contracts entered into by state agencies on and after January 1, 2001.

(2) The technology access clause shall clearly state, as a condition for the expenditure of state funds in the purchase of information technology, that the input and output technology shall be capable of supporting modification and otherwise provide for equivalent access for both visual and nonvisual use.

(3) The technology access clause shall be included in all contracts made by state agencies that involve the purchase of an automated information system, without regard to:

(a) The source of funds used to make the purchase;

(b) Whether the purchase is made under delegated purchasing authority; or

(c) The source of law under which the purchase is made.

Sec. 20. (1) The Legislature finds that:

(a) Newspapers are a significant and important source of daily information;

(b) As a written form of media, newspapers are able to provide indepth coverage of issues as well as coverage of a breadth of issues which may be absent in other electronic or broadcast media;

(c) While a newspaper's written format has advantages, such written format severely limits the ability of blind and other print-reading-impaired persons to obtain information from newspapers;

(d) This information deficit contributes to an unemployment rate estimated at seventy-five percent among working-age blind persons to whom the availability of such detailed news coverage would vastly improve opportunities for meaningful employment;

(e) There are a significant number of blind and other print-reading-impaired persons in Nebraska who would benefit from having timely and complete access to local and national newspapers;

(f) Due to technological advances, newspapers can be efficiently and effectively distributed by voice to enable access by blind and other print-reading-impaired persons; and

(g) The state should maintain a system by which blind and other print-reading-impaired persons can access the information newspapers provide.

(2) The purpose of this section and section 21 of this act is to provide a digital voice newspaper delivery system to enable blind and other print-reading-impaired persons to access newspapers in a timely and comprehensive manner.

Sec. 21. (1) The Commission for the Blind and Visually Impaired shall establish standards and procedures for a statewide digital voice newspaper delivery system and shall oversee its operation. The commission shall:

(a) Enter into contracts for the operation of such system;

(b) Provide space for the location of distribution devices and other equipment necessary to operate the system;

(c) Provide for daily monitoring to assure prompt and accurate functioning;

(d) Advertise the system and recruit blind and other print-reading-impaired persons for user certification;

(e) Develop and implement procedures for user certification;

(f) Serve as a coordinator between the system operator and the certified users; and

(g) Adopt and promulgate rules and regulations to carry out this section and section 20 of this act.

(2) Any certified user of the system shall not be charged for access to the system other than instate and out-of-state long-distance charges incurred while accessing the system.

Sec. 22. This act becomes operative on July 1, 2000.

Sec. 23. Original sections 83-210.01 to 83-210.03, 83-211, 83-211.02, and 84-1604.01, Reissue Revised Statutes of Nebraska, and section

71-4720.01, Revised Statutes Supplement, 1998, are repealed.

Sec. 24. The following sections are outright repealed: Sections 83-210.04 to 83-210.07 and 83-212, Reissue Revised Statutes of Nebraska, and section 71-4733, Revised Statutes Supplement, 1998.

Sec. 25. Since an emergency exists, this act takes effect when passed and approved according to law.